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5
6 **SUPERIOR COURT OF ARIZONA**
7 **MARICOPA COUNTY**

8 ARIZONA CORPORATION
COMMISSION

Case No. CV 2005-005484

9 Plaintiff,

10 v.

11 MATHON MANAGEMENT COMPANY,
12 L.L.C., fka an Arizona limited liability
company now dba a Delaware limited
13 liability company, SLADE WILLIAMS AND
ASSOCIATES, L.L.C., an Arizona limited
14 liability company, MATHON FUND I,
L.L.C., an Arizona limited liability company,
15 MATHON FUND, L.L.C., fka an Arizona
limited liability company now dba a
16 Delaware limited liability company,
INTEGRITY101, L.L.C., an Arizona limited
17 liability company, INTEGRITY 201, L.L.C.,
an Arizona limited liability company,
18 INTEGRITY 301, L.L.C., and Arizona
limited liability company, INTEGRITY401,
19 L.L.C., an Arizona limited liability company,
INTEGRITY 501, L.L.C., an Arizona limited
20 liability company, INTEGRITY 601, L.L.C.,
an Arizona limited liability company,
21 INTEGRITY 701, L.L.C., an Arizona limited
liability company, INTEGRITY 801, L.L.C.,
22 an Arizona limited liability company,
INTEGRITY 901, L.L.C., an Arizona limited
23 liability company, ROUND VALLEY
CAPITAL, L.L.C., an Arizona limited
24 liability company, W.S.F. – WORLD
SPORTS FANS, L.L.C., an Arizona limited
25 liability company, MILL CREEK, L.L.C., an
Arizona limited liability company,
26 BELLEVUE HOLDINGS, L.L.C., an
Arizona limited liability company, OAK
27 HARBOR FINANCIAL, L.L.C., an Arizona
limited liability company, SW STRATEGIC,
28 WEALTH ADVISORS, L.L.C., an Arizona

NOTICE OF FILING OBJECTION TO
APPLICATION OF QUARLES,
BRADY & STREICH LANG'S
REQUEST FOR ATTORNEYS FEES
AND EXPENSES

(Assigned to the Honorable
Barry C. Schneider)

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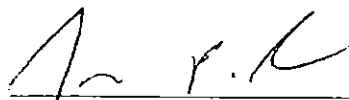
1 limited liability company, EVERETT
2 CAPTIAL, L.L.C., an Arizona limited
3 liability company, CRE CAPITAL, L.L.C.,
4 an Arizona limited liability company,
5 MEZZANINE MANAGEMENT, L.L.C., an
6 Arizona limited liability company,
7 MEZZANINE FUND I, L.L.C., an Arizona
8 limited liability company, JONAS FUND I,
9 L.L.C., an Arizona limited liability company,
10 TEMPLAR FUND L.L.C., fka an Arizona
11 limited liability company now dba a
12 Delaware limited liability company,
13 MERCER ISLAND, L.L.C., an Arizona
14 limited liability company, CONNECTICUT
15 PROPERTIES, L.L.C., an Arizona limited
16 liability company, FIRST ATLANTA
17 INVESTMENTS, L.L.C., a Georgia limited
18 liability company, MM COLONIAL FUND,
19 L.L.C., a Delaware limited liability company,
20 SLADE CONSTRUCTION, L.L.C., an
21 Arizona limited liability company,
22 DUANE SLADE and JENNIFER SLADE,
23 husband and wife, GUY ANDREW
24 WILLIAMS and LISA WILLIAMS, husband
25 and wife,

Defendants.

James C. Sell, the Court Appointed Conservator, on behalf of the Conservatorship Estate, and on behalf of the Debtors ("Sell" or Receiver/Conservator"), hereby files this *Notice of Objection to Application of Quarles & Brady Streich Lang's, Request for Attorney Fees and Expenses*, attaching hereto a copy of the Objection filed in the Mathon Bankruptcy proceedings, as Exhibit "A". Exhibit "A" which is incorporated herein in full, shall constitute Sell's formal objection herein. To the extent that there is a confirmed Chapter 11 Plan, which consolidates all of the Conservatorship entities, this matter is appropriately heard by the Bankruptcy Court.

DATED this 29th day of November, 2006

JABURG & WILK, P.C.



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Jonathan P. Ibsen
Attorney for Conservator

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COPY of the foregoing mailed
this 29th day of November, 2006.

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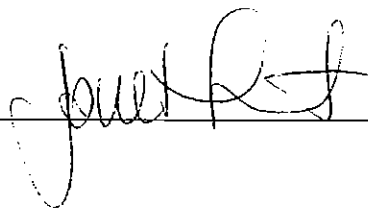
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Court Appointed Conservator

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Special Counsel for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
MATHON FUND, L.L.C., et al,
Debtors.

Chapter 11 Proceedings
Case No: 05-27993 PHX GBN
(Jointly Administered with Case Nos.
05-27994 PHX-SSC and
05-27995 PHX- JMM)

THIS FILING APPLIES TO:

- ALL DEBTORS
- SPECIFIED DEBTORS

**OBJECTION TO APPLICATION OF
QUARLES & BRADY STREICH LANG,
LLP, COUNSEL FOR THE OFFICIAL
COMMITTEE OF MATHON INVESTORS
(STATE COURT) FOR ALLOWANCE OF
FINAL COMPENSATION AND
REIMBURSEMENT OF EXPENSES**

James C. Sell, the Court Appointed Conservator, on behalf to the Conservatorship Estate, and on behalf of the Debtors ("Sell" or "Receiver/Conservator"), hereby objects to the *Application of Quarles & Brady Streich Lang, Counsel for the Official Committee of Mathon Investors (State Court) for Allowance of Final Compensation and Reimbursement of Expenses (the "Application")*. Sell's objection is based upon the following Memorandum of Points and Authorities.

1 DATED this 29th day of November, 2006.

2 JABURG & WILK, P.C.

3 /s/ 006510

4 _____
5 Lawrence E. Wilk
6 Jonathan P. Ibsen
7 *Special Counsel for Debtor*

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 I. **FACTUAL BACKGROUND**

10 In April, 2005, the Arizona Corporation Commission (the "ACC") commenced an action,
11 under it's police powers, in the Superior Court for Maricopa County, Arizona against Mathon
12 Fund I, LLC, Mathon Fund, LLC, Duane Slade and Guy Williams and related entities ("Mathon
13 Fund I, LLC, Mathon Fund, LLC and related entities are collectively referred to as the
14 "Defendant Entities") seeking, *inter alia*, the appointment of a Receiver over the assets of the
15 Defendant Entities based on alleged violations of the Arizona Securities laws (the "ACC
16 Action"). On April 1, 2005, the ACC obtained an order (the "Receivership Order") appointing
17 James C. Sell as Receiver¹ for Mathon Fund, LLC and numerous other entities (collectively
18 referred to as "Mathon Entities"). The ACC Action alleged *inter alia*, that Duane Slade and Guy
19 Williams (the "Principals") had violated the Arizona Securities Laws by masterminding a scheme
20 to defraud Mathon Investors. The Receivership Order resulted from a regulatory proceeding
21 commenced by the ACC seeking to protect the public from a purported ponzi scheme which
22 bilked investors out of millions of dollars. The Receiver was put in place in an effort to protect
23 the public and alleviate any further sales of unregistered securities and any further violations of
24 the Arizona Securities laws.

25 After numerous meetings between the Receiver/Conservator, his counsel and Bob Lloyd
26 (an active Mathon investor), the Receiver/Conservator was able to impress upon Mr. Lloyd the
27 need for the formation of a "State Court Committee" to aid the Receiver/Conservator in
28 disseminating information to the numerous investors, and to aid in the orderly and efficient

¹ The title of Mr. Sell was subsequently changed from Receiver to Conservator, but his rights, powers and duties remained the same.

1 management and liquidation of the Mathon Entities. The order approving the appointment of the
2 Committee was clear, and unambiguous, as to the understanding of the parties.

3 Unlike a bankruptcy proceeding, the State Court Committee was not a creature of statute.
4 The State Court Committee's sole authority came directly from, and was limited by, the language
5 of the order approving the Committee, (the "Enabling Order"). In accordance with the agreement
6 of the parties, the Enabling Order defined the Committee's role as follows:

- 7 (i) prepare and adopt by-laws;
8 (ii) expand the Committee as prudent and necessary;
9 (iii) employ counsel to assist, advise and represent the Committee
10 in the administration of the case;
11 (iv) assist and advise the Conservator in the investigation of
12 defendants' assets, liabilities and other financial information;
13 (v) work with the Conservator and his counsel to organize and
14 disseminate information to the body of investors in the case; and,
15 (vi) take other steps as necessary and prudent to assist the
16 Conservator to maximize the distribution to investors. (emphasis
17 added)

18 The State Court Committee was created with the clear understanding that the
19 Receiver/Conservator maintained a well defined role in the State Court proceeding and that the
20 State Court Committee's role was to act as a liaison to the investors.

21 This role should have been clearly articulated to the State Court Committee by it's
22 Counsel and thoroughly explained so as to define the parameters for the future actions taken by
23 the State Court Committee and it's Counsel. Accordingly, the reasonableness of any fees to be
24 recovered by the State Court Committee's Counsel must be analyzed in light of the Enabling
25 Order appointing the Committee. Actions undertaken by the State Court's Committee's Counsel
26 outside the scope of the Enabling Order are not entitled to payment. Additionally, since the State
27 Court Committee's Counsel was never appointed by the Bankruptcy Court, the State Court
28 Committees' Counsel's fees are not entitled to an administrative expense priority; especially in
light of the fact that these efforts have not benefited the Bankruptcy Estates in any manner.
Indeed, the Committee's efforts actually hindered the recoveries of funds to the detriment of all
investors. Such efforts should not be rewarded by this Court.

1 As a significant portion of the objection arises out of actions taken by Counsel outside the
2 scope of the Enabling Order, this Objection does not concentrate on “line items” but more
3 appropriately addresses categories of work not entitled to payment under the Enabling Order.

4 II. INTRODUCTION

5 Pursuant to the Application, Quarles & Brady Streich Lang (“QBSL”) seeks allowance as
6 an administrative expense of professional compensation in the amount of \$318,360.50 and
7 reimbursement of actual and necessary expenses in the amount of \$10,843.39. Such
8 compensation relates to unnecessary attorney fees and is not reasonable under the circumstances.

9 The gravamen of this Objection is inextricably intertwined with the unique procedural
10 nature of these Bankruptcy Cases and Quarles & Brady Streich Lang’s (“QBSL”) equally unique
11 role in these cases. As this Court is well aware, QSLB is not Counsel for the Official Committee
12 of Unsecured Creditors in these Cases – that role is occupied by Stinson Morrison. Similarly,
13 QBSL’s services were neither sought by the Debtors, nor approved by this Court.

14 Rather, QBSL comes to this Court as an outsider. Before it would be entitled to any
15 priority to payment, it must first establish an entitlement under the Bankruptcy Code. This would
16 include not only proof of a priority entitlement, but also proof of an allowed claim. Assuming
17 any entitlement, the Debtors hereafter specifically object to certain fees requested by QBSL as
18 follows.

19 III. THE COMMITTEE WAS IMPROPERLY A PAWN OF SPECIAL INTEREST
20 GROUPS

21 From the outset of the case it was clear that the principals who formulated the investment
22 scheme that resulted in the regulatory proceeding wanted the removal of the
23 Receiver/Conservator. The animosity between the principals and Mr. Sell escalated when the
24 initial report filed with the State Court by the Receiver/Conservator outlined the alleged illegal
25 activities undertaken by the Principals. As is common in these types of cases, the investors were
26 reluctant to admit their investment mistake, and continued to believe that the Principals would not
27 have orchestrated this type of fraud upon them. At this point, it was imperative for counsel for
28 the State Court Committee to remain impartial and to maintain a semblance of order among its
members. Instead, the initial response of the investors was to condemn the State for having

1 brought an action seeking the appointment of a Receiver. It was immediately clear that counsel
2 began to lose control of the State Court Committee's actions. Combining the investors'
3 mentality, with the additional fact that the investment was an affinity fraud perpetuated by
4 members of a church – against other church members - provides one with a clear understanding
5 why the State Court Committee became susceptible to a strong undercurrent of control by the
6 Principals. The State Court Committee members remained in constant contact with the Principals
7 continually seeking their input. The undercurrent quickly manifested itself in the State Court
8 Committee's immediate action to seek a replacement for Sell.

9 Such conduct was well beyond the scope of QBSL's authority under the Enabling Order
10 and directly in opposite to the underlying enforcement action in the State Court proceedings.
11 While it was incumbent upon Counsel for the State Court Committee to advise the State Court
12 Committee of its limitations, and that such conduct was beyond the scope of its powers –
13 Committee Counsel abdicated this role. Instead, Counsel allowed the group to become a "rogue"
14 Committee which assumed that they had unlimited power and served at the pleasure and whim of
15 the Principals and other insiders.

16 IV. THE WEINSTEIN GROUP

17 Nowhere does the lack of constraint by the State Court Committee appear more obvious
18 than in its relentless pursuit of the retention of the Weinstein Group as Sell's replacement. At the
19 insistence of certain investors, some of which were sales representatives who were handsomely
20 compensated from proceeds of the investors, the State Court Committee sought to replace the
21 Receiver/Conservator with the Weinstein Group out of Washington State. Instead of seeking the
22 Receiver/Conservator's input into generating a mutual agreement to work together with the
23 Weinstein Group to maximize the value of the Estate's assets, the State Court Committee created
24 an adversarial "beauty contest", in an effort to remove the Receiver/Conservator. The resultant
25 expense caused by both the delay and substantial attorney fees which were required to be incurred
26 was inexcusable.

27 In addition, the State Court Committee ignored the interests of the ACC, who adamantly
28 supported the retention of the Receiver/Conservator. The State Court Committee ignored its

1 inherent limitations. Indeed, nowhere within the four corners of the Enabling Order was the
2 Committee authorized to interview replacements for the Receiver/Conservator and/or to
3 aggressively seek his removal.

4 V. LITIGATION EXPENSES

5 Despite the obstructive tactics undertaken by the State Court Committee, the
6 Receiver/Conservator sought the input of the State Court Committee in the liquidation and
7 distribution of assets. Discussions were ongoing as to the sales of assets. Despite the
8 discussions, the State Court Committee was insistent that no asset should be sold until the
9 Weinstein Group was in place. When it became apparent that this was not going to occur, the
10 State Court Committee revised its position and objected to sales until Alvarez and Marsal could
11 be put in place. This effort also failed following the Bankruptcy Court's refusal to authorize the
12 employment of Alvarez and Marsal. Approximately \$9,660 of fees were expended pursuing the
13 employment of Alvarez and Marsal.

14 In furtherance of his fiduciary duties, the Receiver/Conservator negotiated with potential
15 purchasers and sought court approval of sales. These efforts were constantly thwarted by the
16 Committee's steadfast position to not work with, or aid, the Conservator in these sales.
17 Ironically, the Committees' positions always coincided with the Principals and insiders at the
18 expense of the body of general creditors and investors. Not only were sales not consummated,
19 the attendant cost of this obstructive position resulted in costly litigation.²

20 Nowhere in the Enabling Order is the State Court Committee authorized to incur the
21 litigation expenses now being sought. Consequently this Court cannot justify these fees and
22 expenses being paid as a priority expense of these Bankruptcy cases.

23
24
25 ² A perfect example of wasted litigation was the sale of New Stansbury. The Receiver/Conservator repeatedly
26 requested the aid of the State Court Committee in negotiating the sale of the New Stansbury property in Wyoming.
27 Despite this request, the State Court Committee objected and took the position that the property should not be sold
28 until Weinstein was in place. Accordingly, needless expenses were incurred in litigating a sale which was not
consummated. Subsequent to the filing of the bankruptcy proceedings, the Official Committee of Unsecured
Creditors, working in conjunction with the Receiver/Conservator, negotiated a sale with New Stansbury which
increased the sales price by approximately \$1 million. Had the State Court Committee cooperated, this sale could
have been consummated six months prior, without the needless cost of litigation.

1 VI. COMMITTEES PRE-PACKAGE PLAN

2 In the State Court Committees' zealousness to remove Mr. Sell, they attempted to file a
3 pre-packaged plan, under the guise that the new Bankruptcy Code would allow the State Court
4 Committee to pre-solicit votes prior to approval of a disclosure statement under 11 U.S.C.
5 §1125(g). It was, and still is, the Receiver's/Conservator's position, that the amended statutory
6 framework of the Code allows for only the Debtor to pre-package a plan and to solicit votes prior
7 to approval of the disclosure statement. The issue became moot when the Bankruptcy Court
8 failed to entertain the State Court Committee's Plan.

9 The State Court Committee expended in excess of \$66,000 to generate a plan and
10 disclosure statement which was not approved by the investors, was not authorized by the
11 Receiver/Conservator, was filed in violation of exclusivity provisions of the Bankruptcy Code,
12 was entirely of no value and was arbitrarily dismissed. The State Court Committee's Plan was
13 initiated without any input from the Receiver/Conservator and with the clear intent to remove the
14 Receiver/Conservator. The misguided Plan provided no benefit to these Debtors' Estates.

15 Not only was the pre-packaged plan ill-advised, it resulted in actions being undertaken
16 that violated the ACC's Conservatorship Order and resulted in contempt actions being instituted
17 against the Principals. The documents that brought about the contempt proceeding appear to have
18 been drafted with the consent of the State Court Committee and by its Counsel. The intent of the
19 documents was to transfer the interests of the Principals to an entity outside the control of the
20 Receiver/Conservator³ and thereby empowered the Principals with apparent authority to appoint
21 third parties (other than the Conservator) to control the Debtor Entities.

22 ³ The Receivership Order provides:

23 Except by leave of this Court or the Bankruptcy Court as appropriate, during
24 pendency of the Receivership ordered herein, the Defendants, and all other
25 persons and entities be and hereby are stayed from taking any action to establish
26 or enforce any claim, right, or interest for, against, on behalf of, in, or in the
27 name of, any of the Receivership Defendants, any of their subsidiaries, affiliates,
28 partnerships, assets, documents, or the Receiver or the Receiver's duly authorized
agents acting in their capacities as such, including, but not limited to, the
following actions:

d. Doing any act or thing whatsoever to interfere with the Receiver taking
custody, control, possession, or management of the assets or documents subject
to this receivership, or to harass or interfere with the Receiver in any way, or to

1 Such conduct exceeded the State Court Committee’s authority under the Enabling Order,
2 violated the Receivership/Conservatorship Orders and favored the interests of the Principals over
3 the Creditors and Investors.

4 VII. FAILURE OF THE STATE COURT COMMITTEE TO BE RECOGNIZED IN THE
5 BANKRUPTCY

6 Unlike the State Court Committee, the Bankruptcy Court Committee is a creature of
7 statute and was solicited by the U.S. Trustees Office and noticed to the twenty largest creditors.
8 The result of this solicitation was an official Committee of unsecured Creditors (the “Official
9 Committee”) comprised of a more representative investor group, free from personal agendas. The
10 refusal of the U.S. Trustee to maintain the State Court Committee in place was intentional. The
11 State Court Committee created a deadlock which severely impacted the orderly administration of
12 the case. The fact that there is now a confirmed Joint Disclosure Statement and Plan, that sales
13 have been jointly negotiated and put before the court and approved, and dissent amongst the
14 Committee and the Debtors has been all but alleviated, is not a coincidence. Hidden personal
15 agendas have now been dispensed with and an orderly reorganization process is in place. The
16 process which was adversarial from the outset with the prior committee, has been orderly and
17 economical with the new committee. Unfortunately, this was only accomplished after incurring
18 needless enormous expense of dealing with a rogue committee without appropriate leadership.

19 Simply put, there is no basis in the Bankruptcy Code for the allowance of QBSL’s
20 attorneys’ fees and costs as an administrative expense. QBSL was not employed by or on behalf
21 of the Bankruptcy Estates and its employment was never approved by the Bankruptcy Court.
22 Based on the Application, QBSL incurred approximately \$53,555.50⁴ in fees and \$3,833.92 in
23 expenses on or after the petition date of November 13, 2005. Based on the failure of QBSL to
24 obtain Bankruptcy Court approval of its employment, such post-petition fees and costs are not
25 allowable or compensable. To the extent they are allowable at all, they may only be allowed as
26 an unsecured claim.

27 interfere in any manner with the exclusive jurisdiction of this Court over the
28 assets or documents of the Receivership Defendants. (emphasis added)

⁴ Of this amount approximately \$32,255.50 is duplicative of the litigation and plan and disclosure statement expenses objected to above, leaving a balance of \$21,300 which is separately objected to herein.

1 VIII. CONCLUSION

2 Counsel for the Receiver/Conservator and the Receiver/Conservator are reluctant to object
3 to professional fees unless there has been a clear abuse. A review of the State Court proceedings,
4 including, but not limited to, those areas specifically addressed herein, evidences such an abuse.
5 The State Court Committee is hard pressed to justify their actions under the Enabling Order, and
6 more importantly, to establish that their actions in any way enhanced the Estate. Absent
7 establishing such a benefit, it is difficult to ascertain the reasonableness of the fee.

8 Counsel seeks \$73,102.50 in fees for litigation, \$66,228.50 in fees for the proposed Plan
9 and Disclosure Statement, \$9,660 for fees incurred in connection with the failed effort to employ
10 Alvarez and Marsal, \$21,300 for post-petition services rendered, and \$3,833.92 for expenses paid
11 post-petition.⁵ The role of this State Court Committee was not to advocate the position of special
12 interest groups or to advocate unnecessary and untenable positions. The cost of advocating those
13 special interests should be borne directly by those groups, not the Estates. The fees sought by
14 QBSL clearly reflect fees incurred by QBSL in its ill-fated attempt to advocate the interests of the
15 few, rather than the best interests of the majority of the creditors and investors of these
16 Bankruptcy Estates. Neither of the requests for litigation fees or plan fees are reasonable in light
17 of the foregoing discussion, and the Court should therefore deny recovery of these amounts.

18 To the extent that the Court should determine QBSL's entitlement to any fees, they should
19 be determined to be an unsecured claim subject to distribution in accordance with the terms of the
20 confirmed Plan of Reorganization.

21 DATED this 29th day of November, 2006.

22 **JABURG & WILK, P.C.**

23 /s/ 006510

24 _____
25 Lawrence E. Wilk
26 Jonathan P. Ibsen
27 *Special Counsel for Debtor*

28 ⁵ QBSL seeks approval of \$329,203.89 in fees and expenses incurred. While the Debtor's believe that QBSL is not entitled to a priority for any fees, they additionally object to fees and expenses totaling approximately \$174,124.92.

1 COPY of the foregoing mailed
 2 this 29th day of November, 2006.

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27 /s/Janet Forster
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